

**Town of Milford
Zoning Board of Adjustment
Case #2015-19
Eber & Trudy Currier Family Trust
Along with Sunshine Six, LLC
Variance**

Present: Zach Tripp, Chairman
Fletcher Seagroves
Michael Thornton
Joan Dargie
Kevin Johnson

Excused: Katherine Bauer – Board of Selectmen’s representative

Secretary: Peg Ouellette

The applicant, Eber & Trudy Currier Family Trust along with Sunshine Six, LLC, owner of Map 8, Lot 73, located at 211 Mont Vernon Rd, in the Residence “A” District, is requesting a Variance from Article V, Section 5.02.1, to permit a commercial use of self-storage units within the Residence “A” District.

Minutes Approved on November 19, 2015

Zach Tripp, Chairman, read the notice of hearing into the record. He informed the audience that they typically adjourn around 10 p.m. This is the fourth case of the evening, with three more to follow. It was expected this case would bring them to the 10 p.m. threshold. It was unlikely they would reach the North Family Enterprises case, the Leopold and Diane Bergeron case, and the Douglas Nye case. Are there any objections to tabling them to next meeting on Nov. 5?

Mr. Bergeron spoke on behalf of his parents, Leopold and Diane Bergeron (Case #2015-21), to construct a metal carport. He stated they already placed the order and made a deposit. If they wait too long, they will lose deposit.

K. Johnson said at this point, case would not be heard this evening. Do they want case on Nov. 5, or Nov. 19, or December? If they can’t attend that date, could put it on calendar for a future date.

Applicants said they would go for the Nov. 5th.

K. Johnson said no guarantee it will be heard on that date if cases in front of them are long and involved. They go in order of agenda.

Applicants asked about Nov. 29 that was mentioned.

K. Johnson said they could not get enough board members for that night. Next available meeting will be Nov. 5.

The list of abutters were read. Applicants were present. Abutters Kammie L. Fuller, Tyrone Forbes, Jerone Forbes, Quarry Association c/o Kokko Realty, and Fieldstone Land Consultants were present. F. Seagroves stated for the record that he is not an abutter, but lives at 163 Mont Vernon Rd. He then invited the applicant forward to present the case.

Chad Branon of Fieldstone Land Consultants came forward on behalf of applicants. Property is currently owned by Sunshine Six, LLC. In process of a buy and sell agreement. It is located at 211 Mont Vernon Road. The property consists of 14.9 acres of land with frontage on Mont Vernon Road and currently two existing curb cuts to access it. The property has been used commercially since 1984 when town approved site plan. Also, has been used by school bus transportation company for 30 years. Aerial photo shows existing conditions and how site was utilized for bus storage facility. In 1985 it was rezoned from Industrial to Res. A, which made it legal nonconforming use. It is their understanding that bus company contract lapsed, opening door to this application at this location. They are seeking variance under Sec. 5.02.1 of ordinance to permit expansion of commercial use in Res A. It deals with acceptable uses in Res. A and list of acceptable uses doesn't include the proposed commercial use. Curriers have been in Milford for 30 years and run successful storage facilities across the street and to the north of the subject property. He pointed out existing boundary of the subject property and the existing bus storage facility as well as current location of the Currier self-storage site. Proposal is to maintain use of existing building and add storage to the south side as depicted on the conceptual plan. Design will include all drainage, utilities, landscaping, etc.

There will be five potential structures primarily within existing parking lot. They will utilize 2 existing exit curb cuts and up to 20,000 SF in five buildings. As part of the evaluation process in determining the feasibility, they met with local departments, including Fire Dept. and Community Development. Fire Dept. found no issues and Community Development indicated location seemed reasonable for use considering surrounding uses but informed them that expansion necessitated a variance. Proposed use not allowed in A District but is allowed in R by special exception. Zoning on west is R. Currier self-storage was granted special exception in 1997 to allow storage units at 248 Mt Vernon just across the road and to the north. It seems odd that this use is restricted in districts where it would seem consistent with surrounding uses such as in this case. Since the proposed use is not permitted in the district, although similar, they are requesting variance. The proposed use meets the five criteria.

Z. Tripp said self-storage is allowed in Res. R by special exception. Does plan conform to Res. R setback?
C. Branon said it did meet those setback requirements.

Z. Tripp asked if, at the top, in the north, would there be roads behind the buildings or between the buildings. Is that road within the 15 ft. setback?

C. Branon said currently plan shows building approximately 35 ft. off property line. If they contemplate roads there would make sure to have adequate buffer as required. There is significant grade change; site sits lower than area. Part of the reason he met with Fire Dept. is that they had to contemplate requirements for access. If they have to design for emergency vehicles they have to contemplate larger turnaround. Meeting resulted in Fire Dept. stating they had no problem with property and would not need access to the back of the building.

Z. Tripp asked if plan was to keep trees along Rt. 13 and if trees depicted along north of the property were on their property or on abutting property.

C. Branon said yes, and the trees are on their property.

Z. Tripp asked if they will keep those trees on north.

C. Branon said maintaining 15 ft. of the buffer. They are keeping at least 15 ft. of the trees, which would satisfy Special Exception criteria if it was located in Res. R.

Z. Tripp asked what was on other side of the building.

C. Branon said vehicle repair and office space.

Z. Tripp – did they plan to keep the vehicle repair on the site?

C. Branon – yes.

Z. Tripp asked about existing curb cuts.

C. Branon said they provide control. There is a stormwater element there. Having both would allow good traffic flow and would like to maintain them.

Z. Tripp said with buffer requirements he thought they could eliminate one of those curb cuts.

C. Branon said there is an existing 10,000 gallon storage tank that would be removed. All buildings are behind that. If you were standing on site you would recognize that is the buffered quite well from the road.

Z. Tripp asked if it would comply with all criteria for self-storage.

C. Branon said Special Exception criteria? Yes, would comply with all except #4 re outside storage. They would like to have ability to store boats and campers at back of site. No proposal to impact any of the buffer area along the perimeter and simply using the existing gravel parking area.

Z. Tripp asked if structures will be set 50 ft. from the property line. Looks like first building might be 43.

C. Branon said they could adjust it. He thought 30 ft. was mentioned.

Z. Tripp said 30 ft. is Res. R requirement and 50 ft. for special exception. He asked about fencing storage facility.

C. Branon didn't believe there was proposal at this time to fence. He could review that with the client. Their other facilities don't have it and there is no problem with security.

F. Seagroves asked about lighting.

C. Branon said just the building. Plans are compliant with local ordinance. Have not contemplated that element of design but no reason to believe they would be seeking any relief. Many of them had opportunity to see existing ones driving by. Not much use or traffic.

M. Thornton asked about set hours of operation.

C. Branon said didn't believe so. It is a convenience use. Track record in existing facilities in town proves there were no problems. They have strict requirements for rental. It is not for public use. There are restrictions on what can be stored.

K. Johnson asked that not for public use meant a business could not be operating out of one and business could not store overflow materials in one?

C. Branon said he believed that was true.

Z. Tripp asked if there were any comments or questions from the board. There were none. He opened the meeting for public comment.

Tyrone Forbes of 78 Robbins Road, Wilton came forward. He and his brother have 30 ft. right of way straight through up to quarry line, by law. Judge Prescott and Town put it on warranty deed. Cost him a lot of money to protect his rights. He has had a lot of harassment over the years. Atty. Kerrigan has protected them. They had to put a chain up through 31 years of fighting.

K. Johnson had him point out his property.

T. Forbes pointed out 3.7 acres with 30 ft. width out to the highway.

K. Johnson asked if it was shown on the map by the dotted line.

T. Forbes said he didn't want to be blocked, which he has been for 30 years.

J. Dargie said it was defined on the map.

Z. Tripp asked if they are using the plan to maintain their rights.

C. Branon said they are depicting it on the plan. That is part of the plan process. They would observe rights of the property owners. That is why it was depicted. They are aware of a right of way there.

K. Johnson asked if there was hard surface on the right of way, or gravel.

C. Branon said it was gravel.

T. Forbes said it stays gravel.

Jerone Forbes of PO Box 651, Milford came forward. He's not happy. They have been through the courts. Judge Prescott got them the right of way. Superior Court in Nashua, Judge in Milford knows. They have been blocked. Where will they put all the snow? He has pictures when the bus lot was there. They should see the wetlands - horrifying. They can't push snow in there. They push it onto his property.

Z. Tripp asked him for any questions about the proposed project.

J. Forbes said as long as they stay out of the right of way. With new people in there not knowing about the right of way, if he goes in there they'll call the police on him. If there's a problem and that road is blocked they will have to turn it over to their attorney.

Z. Tripp said applicant has testified they will keep it.

K. Johnson said what was relationship of current owners to Curriers?

C. Branon said none. Sunshine Six are owners. Curriers are applicants.

K. Johnson asked if Curriers were going to purchase it. Addressing Mr. Forbes, said it sounded likely there will be new owners, not the same people they have had to deal with before. They will keep past problems in mind in reviewing application.

C. Branon said Curriers have been in town 30 years and have been great neighbors to many residents of the community. Sites seem very clean, well-run business and a very visible operation. Everything is visible for people to pass through. No reason for him to believe at this stage they cannot accommodate right of way that exists. It is in the deed and on record. They are not contesting that.

K. Johnson said good point re snow removal. Assumes, looking at the map basically the brown area is wetland. What are plans for snow removal and protecting wetlands?

C. Branon said currently parking lot goes up to the wetland. They would maintain it and plow the snow. Stormwater management are areas to pile snow next to so runoff will happen before it goes into the wetland. For new projects, that is typically the design. This is a re-design. Those elements will be addressed.

Z. Tripp said Planning Board addresses stormwater?

C. Branon said correct. They don't do full design until they get by the use being allowed on the property. Kammie Fuller of 210 Mont Vernon Rd, lives directly across the street. This has been used as an exit and entrance for the buses. She wants to make sure it will not be an exit because it obstructs their driveway. What are plans on that?

Mr. Currier, in the audience, said they plan to be able to exit and enter. They had two areas in mind, which he pointed out on the map.

K. Fuller said that's the way it has been.

C. Branon said for the record that is how they plan to run their operation but Forbes existing right of way is right there; they may enter in that location.

K. Fuller said that was fine. The buses were a problem. Re signage, it is a lot darker out there than on Nashua St. and wants to be sure it is not shining in her windows.

K. Johnson said that is way down the road. It is a step by step process.

K. Fuller said, re operating 24 hours she is a nurse who works all different hours. It could be extremely disruptive to her sleep having people going in and out at different times.

J. Dargie said other Currier units are not late. Usually people don't go there in the middle of the night because of that. Is that how this will be?

C. Branon believed intent was to run similar to existing. For the occasional person who needs to access unit in evening hours they would try to accommodate, but they don't encourage use in evening hours. No issues in other facilities.

K. Fuller asked if existing auto repair would be a separate business than the storage.

C. Branon said it would be a separate entity.

K. Fuller concerned with increase in traffic.

C. Branon said it currently exists as an existing legal nonconforming use.

Z. Tripp said default to the Community Development office on that; they were there to approve or disapprove the storage unit. He had same question. Is that garage current use as a garage?

C. Branon said when they met with the Community Development office it was their understanding the reason for coming before this board was they were adding that element of commercial use that doesn't currently exist on the property. They did not need relief for the garage use because that currently existed.

Z. Tripp said the current use is garage plus bus storage and new use is garage plus self-storage. They were there for approval for self-storage.

C. Branon said there was an office in the existing building.

K. Fuller asked if it could potentially be rented out to another company.

C. Branon said it is currently rented.

Z. Tripp if any change in use would follow same requirements; they would have to come back.

Dan Muller, Attorney for the Quarry Condominiums across the street, disagreed. He said the ZBA did have the ability to look at issue under 674-33 in context of a variance as to whether other relief is required; also Bartlett v. City of Manchester. He understood repair facility was incidental to the bus business.

Having it open to public is not the same use. At the least, it would be expansion of nonconforming use.

He thought it was a new use that would need additional relief. If you are going to use office, it is separate and apart. Best case it is an accessory use to the storage. You would have three potentially three principal uses. They do need additional relief. He presented a letter summarizing his points, and a letter from one of the unit owners, to the Chairman.

Z. Tripp requested him to summarize the letters rather than reading them.

D. Muller summarized his letter. Re this property and the spirit of the ordinance and public interest with regard to the self-storage use. A lot has been made of fact this is a pre-existing nonconforming use. That goes against applicant on both elements. He cited case New London v. New London Board of Adjustment, one of the policies of zoning is eliminating nonconforming use. Applicants are asking to partially perpetuate nonconforming use. At one time it was industrial. It is now Res. A. Proposal is to maintain use but add to that. As indicated will add traffic, making it a more intense use, without repairs to the buses presumably it won't be tied to the self-storage so will be open to the public. It will be perpetuating rather than getting rid of nonconformity. There was talk about character of the area but they are talking about different uses in a zoning district. Where those lines are drawn is legislative decision. It is up to the Town. Because you are next to a line, you don't get benefit of less restrictive zoning. Town decided to change to Res. A and uses there should reflect that. They have known about it and knew about it when buying it. Even if this area had more industrial type uses. There is 9 A LLC case that says when Town makes change you cannot say you get to bypass that. Spirit of the ordinance is we want to change the character. It is residential use—that is what they want there. This would conflict with the purposes there and therefore not satisfy either of the first two criteria. Re right of way shown on plan - right of way will not be able to fence it in. As Chair stated, to comply with general standards for storage units, should be 50 ft. It is not and is on right of way, no room to move it over. Can't see how they preserve right of way and meet the Town standard. It would prevent fences which limits ability for security. With respect to substantial justice it is being argued this is local business and these people have been here for a long time and have done a good job. He has no argument with that. But that runs with the applicants. Variance runs with the land. They could sell it down the road. They may do wonderful job; doesn't necessarily mean next person would. Fact they have a business and run it well doesn't make a difference. Looking at public interest when they re-zoned it and making it more residential. They want to perpetuate what the Town decided to get rid of. It may be convenient for them but it doesn't negate that it is contrary to Town intent when they rezoned. Re diminishment of value, same arguments - they're not proposing something conforming to the 50 ft. standard. They want outside storage. Now they want an office and repair - three principal uses. That is contrary to character the town is seeking and will diminish property values. Re hardship, nonconforming use of the property has never been used as hardship (Greyrock case). They are arguing it has been used for a period of time. In this case, number one, no hardship under the more restrictive standard, and two, given one of the purposes is to get rid of nonconformity, say if you want to stop nonconformity you want something conforming there. It fits that and brings zone closer to what town envisioned. No unnecessary hardship. Re reasonable use, it doesn't meet criteria in Residential for special exception. They are trying to do more there. Trying to have intense nonresidential where town wants less intense. No reasonable use and no special conditions about this property that make it appropriate. Supreme Court in terms of nonconformity focuses on the plight of the owner rather than special conditions of the land.

C. Branon wanted to rebut.

K. Johnson said don't focus too much on where this building is, etc. This is just a conceptual plan. Nothing says they couldn't angle the building to make it fit. That is more a Planning Board issue.

C. Branon said only place that self-storage are allowed in town is in Residential district. That by default says it is reasonable use especially when there are others very close to this property. They understand that current zoning for this parcel doesn't permit the use. That is why they are seeking relief to put use proposed is less intense than residential development on that property. Self-storage is very light users.

Z. Tripp said, re comment on where self-storage is allowed. He read from the Ordinance which says self-storage shall be facilities located on and with frontage on Rt. 13 North, Rt. 13 South, and/or the following parcels on North River Rd. : Map 8, Lot 11, 11-1.19, 48, 49, 50, 51, 53 and 53-5. He said according to the ordinance that is where self-storage units are allowed.

C. Branon said it was mentioned this proposal is extremely intense. They believe less use substantially. Compared to bus shortage use there are at least 40 buses and at least 4 trips every day. Self-storage use in peak weekend, maybe 30 to 40 trips per day, a substantial reduction in intensity. Single family residence is typically 4 to 10 per house per day. In his opinion, that is why self-storage is allowed on Rt. 13 because they are light use and presumably town would like them on a State highway. There have been other cases this Board approved. Recently a case off similar nature off Powers St. where Board voted to allow storage facilities very close to residential area, condos. To bring up layout of the property and say they aren't meeting special exception criteria, by virtue of requesting variance they don't technically need to meet special exception criteria but he is there saying they would be willing to make modifications to the site to comply with the criteria, except for outdoor storage. The area they are proposing for outdoor storage significantly exceeds buffer requirements. The buffer they are providing to the property that Mr. Muller is representing is a great length from that property. Not proposing anything within hundreds of feet of property line. Traffic will be less intense than existing, less intense than under Res. A. Re fencing, there is not technically a fence requirement. With building not allowed within 50 ft. they would gladly modify that. Regarding town intent, many times when there is re-zoning in town it contemplates a number of different parcels throughout town. To say this was rezoned because it didn't want it to be a specific use is not an accurate representation. Variance process allows applicant to come before the board and present what they believe is reasonable use. Conditions they present are, in most cases, are a summation of what is surrounding property. If you are significantly altering the neighborhood, then your use probably doesn't belong. When your use is across the street it is difficult to say you are altering the neighborhood. He mentioned the Curriers have been in town many years because residents have had an opportunity to see how they operate. It is proven. They are not proposing something that doesn't already exist and currently exists close to this site. Diminishment of value doesn't exist. The fact it is allowed in the area proves this. Case 2015-15, the Powers St. case, hired an appraiser to do a property evaluation to say it didn't impact surrounding values. This already has self-storage use. He fails to see how additional storage across the street will diminish property values. Need to consider the need for self-storage in town. The majority of residents within certain circumferences use them. A number of points that have been misrepresented and they do touch on them in their criteria.

Z. Tripp asked for further comments.

J. Dargie suggested that after the public comment they adjourn because of the late hour.

Robert Kokko, manager of the Quarry condominiums came forward and said it was troubling hearing this relationship. It was nothing personal to the Curriers and their operation. Their operation is out of the zone and zoning rules are there to protect them. It is Res. R and Res A zone. They have different requirements. Did this board think they should be treated the same?

Z. Tripp said zones are individual.

R. Kokko said they feel they are being treated the same. Many years ago the town spent lots of hours and attorneys and studies with Nashua Regional Planning Commission to come up with a master plan. Most of that has been enacted. As stated, it is Res. A which has the nonconforming use. Nonconforming goes with the land as long as you don't change. Once that use stops, then the property gets back to what they were looking for, Res. A. He disagreed with the expansion of this use for auto repair. Somewhere in the

application it said it related to auto repair. It is there specifically for repairing buses, the same operation. You are talking about multiple uses and this variance that goes on forever. If approved, they will be destroying Res. A character and zoning of this property which was designated by the master plan. He wants them to protect our zoning. If the board wants to change zoning they should go to the Planning Board with changes to zoning, not doing it here by variance.

Z. Tripp asked if there was anyone who had not had a chance to speak. He did say Mr. Forbes could speak again.

T. Forbes said he was the only one, Forbes family, that has right to come from his property all the way out and all the way back in. When he goes out, someone calls the police.

Z. Tripp said he had already mentioned that. To respect the board's time, are there any new concerns? Applicant already stated he would protect that right of way.

T. Forbes wanted to make it very clear.

D. Muller said re notion of conceptual. He understands what the board is saying. He understands there is a Planning Board process. If you look at cases, Squire Realty v. Town of Merrimack and 1808 v. Town of New Ipswich, the representations to the Board become implied conditions. If this is what they are showing – in fact Squire Realty specifically dealt with a plan that changed from the Zoning Board to the Planning Board and they had to go back to the Zoning Board because they changed the plan. There has to be some specificity here to show public and safety issues.

Z. Tripp commented one thing Zoning Board can do, if this is approved, is to specify they maintain 50 ft. and maintain right of way and storage units don't exceed maximum unit or number of buildings.

K. Johnson said as they learned in their joint meetings, they can also put in a condition that once the Planning Board approves site plan it comes back to the Zoning Board for their consideration.

Z. Tripp asked applicant for any rebuttal.

C. Branon said re conceptual plan in their application it states up to the square feet they are showing. Carriers understand they have not designed the site yet. They understand there will be some modifications potentially for building access, and grading, utilities and other elements during design stage. They requested and may be mentioned in the criteria that it is up to 20,000 sq. ft. self-storage. They have ability to make changes based on commitments made before the Board. They understand the Board can impose conditions. Re the auto repair shop, it sounds like they need to have another conversation with the Community Development Office. They present the proposal to the office.

J. Dargie said it was written in the comments that that was pre-existing.

K. Johnson said that it was also pre-existing as part of the bus storage.

J. Dargie said it would go away.

Z. Tripp said he would think if it was part of the bus storage it would go away.

K. Johnson moved to continue this case to the next meeting.

Z. Tripp said the continuation at the next meeting would start with reading of the letters.

K. Johnson said he didn't want applicant to feel cut off. If additional information he wants to present then, they are still at that stage.

J. Dargie seconded motion to continue case to next meeting.

All voted in favor.

Case #2015-19 was continued to the next regularly scheduled meeting.